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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

James Fortune,

Plaintiff,

Case No:

v.

COMPLAINT

Consequence Sound LLC,

DEMAND FOR JURY TRIAL

Defendant.

Plaintiff James Fortune (“*Plaintiff*”), by and through his undersigned counsel, for his Complaint against Defendant Consequence Sound LLC (“*Defendant*”) states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement under the Copyright Act, 17 U.S.C §501.

2. Plaintiff created a photograph of Jon Bonham, Led Zeppelin’s drummer (the “*Photograph*”) in which Plaintiff owns the rights and licenses for various uses including online and print publications.

3. Defendant is a media company which owns and operates the

1 @Consequence Facebook account (the “*Account*”).

2 4. Defendant, without permission or authorization from Plaintiff, actively
3 copied and/or displayed the Photograph on the Account and engaged in this
4 misconduct knowingly and in violation of the United States copyright laws.

5 **PARTIES**

6 5. Plaintiff James Fortune is an individual who is a citizen of the state of
7 Virginia and who resides in Ashland, Virginia.

8 6. Upon information and belief, Defendant Consequence Sound LLC is a
9 Florida limited liability company with a principal place of business at 5301 North
10 Federal Highway #180, Boca Raton in Palm Beach County, Florida.

11 **JURISDICTION AND VENUE**

12 7. This Court has subject matter jurisdiction over the federal copyright
13 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 8. This Court has personal jurisdiction over Defendant because it
15 maintains its principal place of business in Florida.

16 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Defendant does
17 business in this Judicial District and/or because a substantial part of the events or
18 omissions giving rise to the claim occurred in this Judicial District.

19 **FACTS COMMON TO ALL CLAIMS**

20 **A. Plaintiff's Copyright Ownership**

21 10. Plaintiff is a professional photographer by trade who is the legal and
22 rightful owner of certain photographs which Plaintiff commercially licenses.

23 11. Plaintiff has invested significant time and money in building Plaintiff's
24 photograph portfolio.

25 12. Plaintiff has obtained active and valid copyright registrations from the
26 United States Copyright Office (the “*USCO*”) which cover many of Plaintiff's
27 photographs while many others are the subject of pending copyright applications.
28

1 13. Plaintiff's photographs are original, creative works in which Plaintiff
2 owns protectable copyright interests.

3 14. On September 9, 2002, Plaintiff published the Photograph. A copy of
4 the Photograph is attached hereto as Exhibit 1.

5 15. In creating the Photograph, Plaintiff personally selected the subject
6 matter, timing, lighting, angle, perspective, depth, lens, and camera equipment used
7 to capture the image.

8 16. On May 9, 2018, the Photograph was registered by the USCO under
9 Registration No. VA 2-101-975.

10 17. Plaintiff created the Photograph with the intention of it being used
11 commercially and for the purpose of display and/or public distribution.

12 **B. Defendant's Infringing Activity**

13 18. Defendant is the operator of the Account and is responsible for its
14 content.

15 19. The Account is a key component of Defendant's popular and lucrative
16 commercial enterprise.

17 20. The Account is monetized in that it contains paid advertisements and,
18 upon information and belief, Defendant profits from these activities.

19 21. The Account is further monetized in that directs the public to its
20 Account where it sells merchandise to the public and, upon information and belief,
21 Defendant profits from these activities.

22 22. On or about May 12, 2021, Defendant displayed the Photograph on the
23 Account as part of an online post at URL:
24 [https://www.facebook.com/consequence/photos/a.10150265867111648/101590674](https://www.facebook.com/consequence/photos/a.10150265867111648/10159067406171648/?type=3)
25 [06171648/?type=3](https://www.facebook.com/consequence/photos/a.10150265867111648/10159067406171648/?type=3) (the "*Infringement*"). A copy of a screengrab of the Account
26 including the Photograph is attached hereto as Exhibit 2.

27 23. The Photograph was stored at URL: <https://scontent-hou1->
28

1 1.xx.fbcdn.net/v/t1.6435-
2 9/185838928_10159067406176648_696819922221251932_n.jpg?_nc_cat=107&c
3 cb=1-
4 7&_nc_sid=730e14&_nc_ohc=pdxFMgOCZNsAX9Y60FP&_nc_ht=scontent-
5 hou1-1.xx&oh=00_AT-
6 6gB3AHezTtWm5UWOK_UnkirtKCvYPChrQo7sBUO897A&oe=631D3493.

7 24. Without permission or authorization from Plaintiff, Defendant
8 volitionally copied and/or displayed Plaintiff's copyright protected Photograph on
9 the Account.

10 25. Plaintiff first observed and actually discovered the Infringement on
11 April 4, 2022.

12 26. Upon information and belief, the Photograph was copied and displayed
13 by Defendant without license or permission, thereby infringing on Plaintiff's
14 copyrights in and to the Photograph (hereinafter the unauthorized use set forth above
15 is referred to as the "*Infringement*").

16 27. The Infringement includes a URL ("*Uniform Resource Locator*") for a
17 fixed tangible medium of expression that was sufficiently permanent or stable to
18 permit it to be communicated for a period of more than a transitory duration and
19 therefore constitutes a specific infringement. *17 U.S.C. §106(5)*.

20 28. The Infringement is an exact copy of Plaintiff's original image that was
21 directly copied and displayed by Defendant on the Account.

22 29. Upon information and belief, Defendant takes an active and pervasive
23 role in the content posted on its Account, including, but not limited to, copying,
24 posting, selecting, commenting on and/or displaying images including, but not
25 limited to, Plaintiff's Photograph.

26 30. Upon information and belief, the Photograph was willfully and
27 volitionally posted to the Account by Defendant.
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1 31. Upon information and belief, the Infringement was not posted at the
2 direction of a “user”, as that term is defined in 17 U.S.C. §512(c).

3 32. Upon information and belief, Defendant engaged in the Infringement
4 knowingly and in violation of applicable United States copyright laws.

5 33. Upon information and belief, Defendant has the legal right and ability
6 to control and limit the infringing activities on its Account and exercised and/or had
7 the right and ability to exercise such right.

8 34. Upon information and belief, Defendant monitors the content on its
9 Account.

10 35. Upon information and belief, Defendant has received a financial benefit
11 directly attributable to the Infringement.

12 36. Upon information and belief, the Infringement increased traffic to the
13 Account and, in turn, caused Defendant to realize an increase in its advertising
14 revenues and/or merchandise sales.

15 37. Upon information and belief, a large number of people have viewed the
16 unlawful copy of the Photograph on the Account.

17 38. Upon information and belief, Defendant at all times had the ability to
18 stop the reproduction and display of Plaintiff's copyrighted material.

19 39. Plaintiff created the Photograph with the intention of it being used
20 commercially and for the purpose of display and/or public distribution.

21 40. Defendant's use of the Photograph, if widespread, would harm
22 Plaintiff's potential market for the Photograph.

23 41. On March 10, 2023, Plaintiff, via counsel, served a letter by electronic
24 mail to Defendant seeking to address the complaints contained herein concerning
25 Defendant's Infringement of Plaintiff's rights-protected work, to no avail.

26 42. Despite Plaintiff's efforts and willingness to address Defendant's
27 infringing activity, Defendant has forced Plaintiff to seek redress via judicial
28

1 intervention for Defendant's infringing activity.

2 43. As a result of Defendant's misconduct, Plaintiff has been substantially
3 harmed.

4 **FIRST COUNT**

5 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

6 44. Plaintiff repeats and incorporates by reference the allegations contained
7 in the preceding paragraphs, as though set forth in full herein.

8 45. The Photograph is an original, creative work in which Plaintiff owns a
9 valid copyright.

10 46. The Photograph is properly registered with the USCO and Plaintiff has
11 complied with all statutory formalities under the Copyright Act and under
12 regulations published by the USCO.

13 47. Plaintiff has not granted Defendant a license or the right to use the
14 Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in
15 the copyright to Defendant.

16 48. Without permission or authorization from Plaintiff and in willful
17 violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and
18 illegally copied, reproduced, distributed, adapted, and/or publicly displayed works
19 copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its
20 copyrights.

21 49. Defendant's reproduction of the Photograph and display of the
22 Photograph constitutes willful copyright infringement.

23 50. Upon information and belief, Defendant willfully infringed upon
24 Plaintiff's copyrighted Photograph in violation of Title 17 of the U.S. Code, in that
25 Defendant used, published, communicated, posted, publicized, and otherwise held
26 out to the public for commercial benefit, Plaintiff's original and unique Photograph
27 without Plaintiff's consent or authority, by using it on the Account.

1 51. As a result of Defendant's violation of Title 17 of the U.S. Code,
2 Plaintiff is entitled to any an award of actual damages and disgorgement of all of
3 Defendant's profits attributable to the infringement as provided by 17 U.S.C. § 504
4 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for
5 statutory damages against Defendant for the infringement pursuant to 17 U.S.C. §
6 504(c).

7 52. As a result of the Defendant's violation of Title 17 of the U.S. Code, the
8 court in its discretion may allow the recovery of full costs as well as reasonable
9 attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

10 53. As a result of Defendant's violation of Title 17 of the U.S. Code,
11 Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his
12 copyright pursuant to 17 U.S.C. § 502.

13 **JURY DEMAND**

14 54. Plaintiff hereby demands a trial of this action by jury.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

17 That the Court enters a judgment finding that Defendant has infringed upon
18 Plaintiff's rights to the Photograph in violation of 17 U.S.C. §501 *et seq.* and
19 therefore award damages and monetary relief as follows:

- 20 a. finding that Defendant infringed upon Plaintiff's copyright
21 interest in and to the Photograph by copying and displaying it
22 without a license or consent;
- 23 b. for an award of actual damages and disgorgement of all of
24 Defendant's profits attributable to the infringement as provided
25 by 17 U.S.C. § 504(b) in an amount to be proven or, in the
26 alternative, at Plaintiff's election, an award for statutory damages
27 against Defendant for the infringement pursuant to 17 U.S.C. §
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504(c), whichever is larger;

- c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from any infringing use of any of Plaintiff's works;
- d. for costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- e. for pre-judgment interest as permitted by law; and
- f. for any other relief the Court deems just and proper.

DATED: June 28, 2023

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